

REMARKS

Reconsideration of the above-identified application in view of the present amendment is respectfully requested.

The allowance of claims 45, 48 and 49, and the indication of the allowability of claims 16, 17, 54, 57 and 58 are acknowledged, with appreciation.

By the present amendment, claims 1 and 52-62 are amended to address the concern regarding antecedent basis presented within the Office action. As such it is respectfully requested that the associated rejection be withdrawn.

It is acknowledged, with appreciation, that the previously presented rejections have been withdrawn. This withdrawal is an indication that the Examiner has appreciated the distinction of the present invention over the cited references.

Turning to the rejections based upon an asserted combination of teachings from De Laforcade (U.S. Patent No. 6,000,405) and Margharehi (U.S. Patent No. 5,937,866), the rejections are respectfully traversed.

It is first beneficial to appreciate the teachings presented by the cited references.

The De Laforcade patent is designed so that a knot or other obstacle in the hair does not cause damage to an actuation mechanism or inadvertent actuation of the actuation mechanism. In order to accomplish such a goal, the De Laforcade patent positions brush members 27 of an actuator perpendicular to a longitudinal axis of a supply reservoir 2. The brush member 27 are on a movable portion 22 that is constrained to tilt about a hinge axis of a hinge 23. As discussed in detail at Col. 5, lines 46-60, the actuator is used like a conventual hair brush so that support member 28 and 29 provide the constraint function to the movable portion 22. Thus,

damage to an actuation mechanism and inadvertent actuation are avoided.

However, with an actuating surface 21 located on the movable portion 22 for pivotable movement, the actuation is effectively controllable when held like a conventional brush. Specifically, a generally downward (as viewed in Fig. 3A of the De Laforcade patent) pressing force on the actuation surface results in actuation.

Turning to the Margharehi patent, the teeth 77 extend along an axis. Hair dye is permitted to seep out along the teeth via lateral movement of a disk 59/79. Lateral movement of the disk is controllable via a lateral shifted tab 63/83. In general, it is to be appreciated that the device of the Margharehi patent is inverted to allow the dye to flow out.

Now focusing upon the asserted combination proffered within the Office action, in short summary, the assertion combinations stated that the device of the De Laforcade patent could be modified in view of the Margharehi patent such that the teeth are along the longitudinal axis. However, such a modification would not have been logical to a person of ordinary skill in the art. First, it should be appreciated that such a modification to the device of the De Laforcade patent would likely destroy the beneficial functions presented within the De Laforcade patent. In other words, axial forces transmitted along the axially aligned teeth of the Margharehi patent would be problematic.

More importantly, it seems reasonable that the person of ordinary skill in the art would not have been led to modify the device of the De Laforcade patent to have axially aligned teeth as set forth by the Margharehi patent because the operation of the device of the De Laforcade patent would then become awkward. Specifically, the device of the De Laforcade patent relies upon a generally downward (as viewed

in Fig. 3A of the De Laforcade patent) pressing force on the actuation surface results in actuation, and if the device were modified to have the axially-extending teeth, the actuation action would be along the same axis but in the opposite direction. Further, the user would have to place a finger on the same side of the device from which hair dye is emitted. At best this would again be awkward and at worst quite messy.

It would seem that the Office action already suggests that there is no logical motivation to a person of ordinary skill in the art to modify the device of the De Laforcade in view of the Margharehi patent. Specifically, the Office action does not present any logical motivation that would have led the person of ordinary skill in the art to make such a modification. The only statement made within the Office action is generally a statement that "it would have been obvious . . . for distribution of hair dye throughout the hair and along the shafts." However, each of the two devices (Laforcade and Margharehi) separately provide for this function. Thus, the assertion to accomplish function (hair dye distribution) certainly cannot be a motivation to combine the discreet teachings. Thus, as mentioned above, the lack of proper motivation for the asserted combination within the Office action is a clear indicator that the person of ordinary skill in the art would not have been led to make the asserted combination.

Accordingly, it is respectfully submitted that all of the rejections, which are based upon the asserted combination of Laforcade and Margharehi, should be withdrawn.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 35485.

Respectfully submitted,

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